

*Amended
1/10/85*

ITEL

Itel Rail Corporation

55 Francisco
San Francisco, California 94133
(415) 984-4000
Telex 34234

RECORDATION NO. 9756-12 Filed 1425

JAN 14 1985 - 2 10 PM

5-014A043

December 28, 1984

INTERSTATE COMMERCE COMMISSION

No.

JAN 14 1985

Date

Fee \$ 10.00

ICC Washington, D. C.

Mr. James H. Bayne, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Mr. Bayne:

*I think
this may
be
9756-M
but not sure.*

Pursuant to 49 U.S.C. Section 11303(a) and the Interstate Commerce Commission's rules and regulations thereunder, I enclose herewith on behalf of Itel Rail Corporation for filing and recordation under the Lease Agreement dated as of April 26, 1978 between Itel Corporation, Rail Division as predecessor in interest to Itel Rail Corporation and East Camden and Highland Railroad Company which was filed with the I.C.C. on October 11, 1978 and given I.C.C. Recordation No. 9756, four counterparts of the following document:

Amendment No. 11 to the Lease Agreement dated as of April 26, 1978 between East Camden and Highland Railroad Company and Itel Rail Corporation, as successor in interest to Itel Corporation, Rail Division.

The names and addresses of the parties to the aforementioned are:

1. East Camden and Highland Railroad Company
Building 142
East Camden Industrial Park
East Camden, Arkansas 71701
 2. Itel Rail Corporation
55 Francisco, 5th Floor
San Francisco, California 94133
- Herbert Brombe*
- Amended*

The equipment covered by this Amendment is thirty (30) 60' 100-ton plate C boxcars within the series EACH 40001-41000.

Also enclosed is a check in the amount of \$10.00 for the required recording fee.

Mr. James H. Bayne, Secretary
December 28, 1984
Page Two

Please stamp all counterparts of the enclosed Amendment with your official recording stamp. You will wish to retain one (1) counterpart of the document for your files; it is requested that the remaining three (3) counterparts bearer of this document.

Sincerely,



Denise M. Bottarini
Legal Assistant

DMB/vdv

cc: Robert S. Clark, Esq.
Senior Trust Officer
First Security Bank of Utah, N.A.
Corporate Trust Division
79 South Main Street
Salt Lake City, Utah 84125

Virginia Hanger
Itel Rail Corporation.

Interstate Commerce Commission
Washington, D.C. 20423

1/14/85

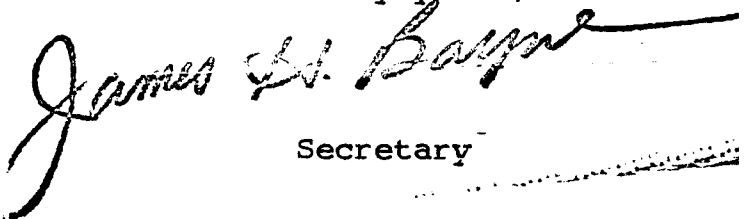
OFFICE OF THE SECRETARY

Denise M. Bottarini
Legal Assistant
ItelRail Corporation
55 Francisco
San Francisco, Calif. 94133

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/14/85 at 2:50pm and assigned re-recording number(s) .9756-N, 14544, 14545

Sincerely yours,


Secretary

Enclosure(s)

AMENDMENT NO. 11

JAN 14 1985 10 12 PM

INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT NO. 11 (the "Amendment") to that certain Lease Agreement (the "Agreement") made as of April 26, 1978, between Itel Corporation, Rail Division and EAST CAMDEN AND HIGHLAND RAILROAD COMPANY ("Lessee") is made as of the 24th day of September, 1984, by and between ITEL RAIL CORPORATION, as successor in interest to Itel Corporation, Rail Division ("Itel Rail") and Lessee.

R E C I T A L S

- A. Itel Rail and Lessee are parties to the Agreement, pursuant to which five hundred (500) boxcars bearing the reporting marks EACH 2001-2200, EACH 2351-2500, EACH 4001-4150 (the "Cars") have been leased and delivered by Itel Rail to Lessee, and pursuant to which eight hundred (800) boxcars which were to bear reporting marks EACH 2201-2350, EACH 2701-3050, EACH 3051-3200, and EACH 3201-3350 ("Undelivered Car") have been leased but not delivered by Itel Rail to Lessee.
- B. Itel Rail and Lessee mutually desire to remove the Undelivered Cars from the Agreement.
- C. Itel Rail and Lessee agree that it is to their mutual benefit for Lessee to enter into a sublease agreement with a third party for a certain number of the Cars for a period of time to improve the utilization of and revenue from the Cars.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree to amend the Agreement as follows:

- 1. All terms defined in the Agreement shall have their defined meanings when used in this Amendment.
- 2. Equipment Schedule Nos. 2.A., 5, 6, and 7, attached to and incorporated into the Agreement, shall be deleted in their entirety.
- 3. Itel Rail consents to Lessee's entering into a sublease agreement (the "Sublease") with North Louisiana and Gulf Railroad Company ("Sublessee") dated as of September 24, 1984, for thirty (30) Cars bearing reporting marks within the series EACH 4001-4100 (the "Boxcar(s)") for a period of time to improve the utilization of and revenue from the Boxcars. Itel Rail's consent is hereby specifically conditioned upon the following: (a) Lessee's agreement that Lessee shall remain primarily responsible for the payment of rent set forth in the Agreement and for the performance of all the other terms of the Agreement to be performed by the Lessee; and (b) Lessee's agreement that the Sublease is subject and subordinate to the rights of Itel Rail under the Agreement and any modification or amendment thereof; and (c) Itel Rail is deemed to be a third party beneficiary of the Sublease and is granted all rights of Lessee (including all rights to collect Revenues and to enforce the terms and conditions) under the Sublease but is not subject to any of the Lessee's obligations thereunder.

4. The term of the Sublease with respect to each Boxcar shall commence at 12:01 P.M. on the date and at the location that such Boxcar is remarked with the Sublessee's reporting marks and shall continue as to all the Boxcars described on each Schedule for five (5) years from the date on which the first Boxcar on such Schedule was remarked ("Initial Sublease Period"). Upon expiration of the Sublease, the Sublease may be extended for a period of time only upon the mutual agreement of the parties (such period to be called the "Extended Sublease Period").
5. The initial remarking, final remarking and return of the Boxcars pursuant to the Sublease shall be at Lessee's expense. Itel Rail shall be responsible for all transportation costs related to the initial delivery of the Boxcars to Sublessee's line. Concurrent with any restencilling at the commencement, expiration or early termination of the Sublease, Lessee shall provide Itel Rail with a Certificate of Remarking (in the form of Exhibit A attached hereto) specifying the previous and current reporting marks for each Boxcar remarked pursuant to the Sublease. Such Certificate of Remarking shall become attached to and incorporated into this Amendment.
6. During the Initial Sublease Period and any Extended Sublease Period only, a new Subsection 5.E. shall be added solely with respect to the Boxcars:

"E. Itel Rail may, in good faith and by appropriate proceedings contest any assessment, notification of assessment or tax bill. Itel Rail shall assume full responsibility for all expenses, including legal fees, resulting from such contest."

7. During the Initial Sublease Period or any Extended Sublease Period only, Section 6 of the Agreement, as it now reads ("Old Section 6") shall be replaced by the following solely with respect to the Boxcars:

"6. Rent

A. Definitions

- (i) "Per Diem Revenues" is defined as the total per diem revenues earned and due from other railroad companies for the use or handling of the Boxcars, including but not limited to, per diem, whether or not collected and received by Itel Rail and undiminished by any claimed abatement, reduction or offset caused by any action of Itel Rail. Upon any such abatement, reduction or offset, Lessee shall, within ten (10) days of Itel Rail's request, reimburse Itel Rail for such amounts. Unless Lessee receives Itel Rail's prior written approval, Per Diem Revenues shall in no event be calculated at an amount less than the per diem rates listed for each Boxcar in the Hourly and Mileage Car Hire Rate

- (i) In the event that the Utilization Rate of the Boxcars, in the aggregate, during any calendar year or applicable portion thereof ("Year") does not exceed seventy percent (70%), Itel Rail shall receive a sum equal to one hundred percent (100%) of the total Per Diem revenues for such Year.
- (ii) In the event that the Utilization Rate of the Boxcars, in the aggregate, during any Year exceeds seventy percent (70%) but does not exceed ninety percent (90%), Itel Rail shall receive an amount equal to the Base Rent for such Year and Lessee shall receive an amount equal to one hundred percent (100%) of the Per Diem Revenues earned during such Year in excess of the Base Rent.
- (iii) In the event that the Utilization Rate of the Boxcars, in the aggregate, during any Year exceeds ninety percent (90%): (a) Itel Rail shall receive an amount equal to the Base Rent for such Year, plus an amount equal to fifty percent (50%) of that portion of the Per Diem Revenues earned during such Year by the Boxcars, in the aggregate, at a Utilization Rate greater than ninety percent (90%), and (b) Lessee shall receive an amount equal to one hundred percent (100%) of that portion of the Per Diem Revenues earned during such Year by the Boxcars, in the aggregate, at a Utilization Rate greater than seventy percent (70%) but less than or equal to ninety percent (90%), plus an amount equal to fifty percent (50%) of that portion of the Per Diem Revenues earned during such Year by the Boxcars, in the aggregate, at a Utilization Rate greater than ninety percent (90%).
- (iv) Itel Rail shall receive an amount equal to one hundred percent (100%) of the Mileage Revenues earned and due from other railroad companies with respect to the Boxcars.

D. The calculations required in Subsection 6.C shall be made within five (5) months after the end of each calendar year ("Final Calculations"). However, to enable Itel Rail to meet its financial commitments, Itel Rail shall, prior to making such calculations, retain the payments received by it on behalf of Lessee. Further, since the parties desire to determine on a quarterly year-to-date basis the approximate amounts owed under Subsection 6.C., Itel Rail shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis the amount due either party pursuant to this Section. Any amounts payable

pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that within twenty (20) days following the Final Calculation, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.

- E. If, with respect to any calendar quarter, actual Revenues are less than the Revenues the Boxcars would have earned at a Utilization Rate of seventy percent (70%), Itel Rail may, at any time, at its option and upon not less than ten (10) days prior written notice to Lessee, terminate this Agreement as to such Boxcars as Itel Rail shall determine; provided, however, that Lessee may, at its option, within ten (10) days of receipt of such notice from Itel Rail, void such termination notice by paying to Itel Rail an amount equal to the difference between actual Revenues for such calendar quarter and the Revenues the Boxcars would have earned at a Utilization Rate of seventy percent (70%).
- F. If, subsequent to the Initial Loading, any Boxcar remains on Sublessee's railroad lines for more than seven (7) consecutive days, excluding those days such Boxcar is undergoing servicing, repair or alteration as provided for in Section 5 unless such servicing, repair or alteration was occasioned by the fault of Sublessee, Itel Rail may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate the Agreement as to such Boxcar and take possession of such Boxcar on Sublessee's railroad tracks. If any such Boxcar has remained on Sublessee's railroad tracks for more than seven (7) consecutive days because Sublessee has not given preference to the Boxcars as specified in Subsection 3.8., Lessee shall be liable for and remit to Itel Rail an amount equal to the Revenues which would have been generated if such Boxcar had been in the physical possession and use of another railroad for the entire period during which such Boxcar is on Sublessee's railroad line.
- G. In the event damage beyond repair or destruction of a Boxcar has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Boxcar will be removed from the rental calculations of the Agreement on the date car hire ceased as set forth in the aforementioned Rules 7 and 8. Itel Rail may, at its expense, replace any destroyed Boxcar with similar equipment upon prior written notice from Itel Rail to Lessee. If any Boxcar, while in the possession of Lessee or Sublessee, is damaged to the extent that such damage exceeds the AAR Depreciated Value ("DV") for such Boxcar, Lessee shall notify Itel Rail within sixty (60) days following the date of the occurrence of such damage ("Damage Date"). If Lessee fails to notify Itel Rail within sixty (60) days of the Damage Date, Itel Rail has the right to

engage an independent appraiser to inspect such Boxcar to determine the extent of such damage. Lessee shall remit to Itel Rail an amount equal to the DV of such Boxcar within thirty (30) days of receipt of an invoice from Itel Rail.

- H. Any agreement between Lessee or Sublessee and other parties with respect to the Boxcars ("Third Party Agreement(s)") shall be void without Itel Rail's prior written approval of the conditions contained therein if such Third Party Agreement affects the Revenues earned by the Boxcars, provided, however, that this shall in no event prevent or prohibit Sublessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor.
- I. Itel Rail and Lessee agree to cooperate with and to assist each other in any reasonable manner requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Boxcars, provided, however, that this shall not affect their respective obligations under this Section 6."

Upon the expiration or termination of the Sublease, Old Section 6 shall be reinstated in the Agreement with respect to the Boxcars.

8. Except as expressly modified by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect with respect to all of the Cars subject to the Agreement, including the Boxcars.
9. This Amendment may be executed by the parties hereto in any number of counterparts and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAIL CORPORATION

By: *[Signature]*
Title: President
Date: December 20, 1984

EAST CAMDEN AND HIGHLAND RAILROAD
COMPANY

By: *[Signature]*
Title: President
Date: 11-14-84

EXHIBIT A
CERTIFICATE OF REMARKING

<u>Old EACH Boxcar Marks</u>	<u>New NLG Boxcar Marks (at commencement of Sublease)</u>	<u>Date of Remarking</u>	<u>New EACH Boxcar Marks (pursuant to expiration of Sublease)</u>	<u>Date Rem:</u>
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ITEL RAIL CORPORATION

By: _____

Title: _____

Date: _____

EAST CAMDEN AND HIGHLAND RAILROAD COMPANY

By: Don E. Hunt

Title: President

Date: 11-14-84

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 20th day of December, 1984, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of IteL Rail Corporation, that the foregoing Amendment No. 11 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Jimmy E. Ronger
Notary Public

STATE OF ARKANSAS)
) ss:
COUNTY OF OUACHITA)

On this 14th day of NOVEMBER, 1984, before me personally appeared DON E. GHENT, to me personally known, who being by me duly sworn says that such person is PRESIDENT of East Camden and Highland Railroad Company, that the foregoing Amendment No. 11 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

MY COMMISSION EXPIRES 11-15-84

Sarah G. Derrick
Notary Public